

Notice of Allowability

Application No.

10/712,533

Examiner

N. M. Minnifield

Applicant(s)

DRUILHE ET AL.

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 8/5/08; 12/8/08.
2. ☒ The allowed claim(s) is/are 4,5,8-12,34,36,42,43,45 and 46; now renumbered 1-13 respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date attached.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kenneth Meyers, 25146 on December 8, 2008.

2. Applicants' amendment filed August 5, 2008 is acknowledged and has been entered. Claims 4 and 5 have been amended. Claims 2, 3, 6, 7 and 41 have been canceled. Claims 1, 12-40, 43 and 44 have been withdrawn. New claims 45 and 46 have been added. Claims 4, 5, 8-11, 42, 45 and 46 are directed to the elected invention. All rejections have been withdrawn in view of Applicants' amendment to the claims and/or arguments set forth in the Remarks.

3. Claims 4, 5, 8-11, 42, 45 and 46 are directed to an allowable product. Pursuant to the procedures set forth in MPEP § 821.04(b), claims 12, 34, 36 and 43, directed to the process of making or using the allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104. Claims 1, 13-33, 35, 37-40 and 44 are, directed to the invention(s) of Groups I, IV, V, VI, VII, VIII, IX, X, XII and XIII do not all require all the limitations of an allowable product claim, and have NOT been rejoined.

Because a claimed invention previously withdrawn from consideration under 37 CFR 1.142 has been rejoined, **the restriction requirement between groups II, III and XI as set forth in the Office action mailed on September 26, 2006 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

4. In the claims:

- a. Claims 1, 13-33, 35, 37-40 and 44 have been canceled.
- b. Claim 36. (currently amended) An in vitro process of detecting malaria in an individual susceptible of being infected with *Plasmodium falciparum*, wherein the process comprises:
 - a) bringing a biological sample removed from an individual susceptible of being infected with *Plasmodium falciparum* into contact with at least one isolated or purified antigen as claimed in claim 9 or an antigenic conjugate comprising at least one isolated or purified antigen as claimed in claim 9 and a support on which said antigen is adsorbed under conditions allowing the formation of an immune

complex between the at least one antigen or the antigenic conjugate and an antibody that may be present in said biological sample, wherein said biological sample is a biological fluid, biological tissue, or biological fluid and biological tissue; and

- b) detecting *in vitro* any immune complex formed.

5. Claims 4, 5, 8-11, 34, 36, 42, 43, 45 and 46 have been allowed and renumbered 1-13 respectively.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. M. Minnifield whose telephone number is 571-272-0860. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert B. Mondesi can be reached on 571-272-0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to

the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. M. Minnifield/
Primary Examiner,
Art Unit 1645
December 8, 2008